

The 15th November, 1994

No. 14/13/87-6Lab./801.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Industrial Cables (India) Ltd., Kilazafargarh, District Jind *versus* Satya want.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 236 of 1994

between

SHRI SATYAWANT S/O SHRI RANDHIR SINGH, VILLAGE AKALGARH, P. O.
BUDHA KHERA LATHAR, TEH. & DISTRICT JIND

.. Workman

and

THE MANAGEMENT OF M/S INDUSTRIAL CABLES (INDIA) LTD, KILAZAFARGARH,
DISTRICT JIND

Present :

Shri O. P. Punia Authorised Representative for the workman.

Shri S. Kaushal Authorised Representative for the management.

AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 the Governor of Haryana referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide* Labour Department Endorsement No. SOV/Bhiwani/464-88/1898—1903 dated 11th January, 1989 :—

Whether the termination of services of Shri Satyawant is justified and in order? If not, to what relief he is entitled?

2. The workman and the management were summoned. The workman appeared and filed the claim statement which is to the effect that the applicant was appointed as Helper by the respondent with effect from 17th December, 1985 in the department of G.F. and allotted token No. 383, 102 but at later stage the token number was changed to 53. The applicant worked sincerely without giving any kind of opportunity to the employer for any kind of complaint in his working and his work was satisfactory throughout. That surprisingly the applicant was kicked out from the employment on 22nd February, 1988 and was not permitted to do his duty nor allowed to mark his presence nor allowed to enter the premises of the company and this action had taken place under section 2(oo) of the Industrial Disputes Act. The applicant pressed hard for being taken back in the employment alongwith others and the Personnel Manager went on giving assurances and ultimately refused to take back the applicant which and is in breach of statutory provisions of the Industrial Disputes Act. For the reasons the applicant served the company for more than one year and 240 days of continuous service; the applicant was not paid retrenchment compensation at the time of retrenchment as provided under section 25-F(b); the applicant was removed without service of appropriate notice on appropriate Government as provided under section 25-F(c) of Industrial Disputes Act; the respondent company is also covered by provisions of chapter V-B of the Industrial Disputes Act as it has engaged more than one hundred employees. The workman can not be retrenched without complying with provisions of section 25-F of the Industrial Disputes Act, which action tantamount to an offence is *prima facie* illegal and untenable; that the respondent had wrongfully removed the applicant in breach of statutory provisions and hence applicant is entitled to seek the declaration and an award from this Court to the effect his removal is nullity, void *ab initio* and he continues to be in service and thus the applicant is entitled to all the benefits including continuity of service, back wages, all increments and all back wages with interest @ 18 P.A. with costs.

3. The respondent appeared and filed the written statement that reference order is mis-conceived bad in law and is liable to be rejected as Government of Haryana had made the present reference mechanically and without application of mind and without even considering the submission made by the management. The workman was appointed as a temporary hand for a specific period with effect from 17th June, 1987 as per the letter of dated 17th June, 1987 which constitute specific terms and conditions of service

applicable to the workman. The workman was appointed as temporary hand for their factory for maximum period for three months as per the letter of his appointment dated 17th June, 1987 duly received by the workman; that he had worked with the management continuously with effect from 17th December, 1985. It is submitted that the termination of services of the applicant as temporary employees who is engaged for a specific period as per contract of employment does not fall within the meaning of section 2(oo) of the Industrial Disputes Act, so the workman is not entitled to reinstatement with continuity of service and back wages etc. Hence, the claim petition is liable to be dismissed.

4. Replication was filed by the workman. On the pleadings of the parties, the following issues are laid down :-

- (1) As per terms of reference?
- (2) Whether the reference is bad being made without application of mind?
- (3) Whether the workman was employed for a specific period as per contract? If so, to what effect?
- (4) Relief?
- (5) My findings on the above issues with reasons thereof are as under :-

Issue No. 1:

6. The workman has come into witness box as WW-1 and closed his evidence. The management has examined Shri Krishan Lal, Supervisor and after that closed the evidence.

7. The learned authorised representative for the management made submission that factory is lying closed and for the said reason the workman had worked for less than 240 days and he is not entitled to the claim the service benefits. For that I have to go to the evidence examined by the parties.

8. The management has examined Shri Krishan Lal who made the statement that he used to work in the respondent and worked upto 26th October, 1992 and thereafter the factory was closed and the workers had taken their account and left the respondent. Further made statement that there no work on the roll as factory is closed. He made statement on cross-examination that 72 workers used to work in the factory and he does not know whether the State Government has permitted to closed the industry or not and he could not tell whether the factory had sent a letter to the applicant. There is union of workers or not. I do not find if this suggestion was made to Krishan Lal that factory was working and all the workers had not been asked to leave the industry.

9. Shri Satyawant has come to witness box as WW-1 and made statement that factory though is lying closed but the clouser is illegal and factory shall start working again.

10. It is proved case that the Industry is closed. The contention was made by the workman that the industry has been closed only gave a lesson to the workman, to not go on strike for pressure on their demands and the industry shall start again. I am of the view that it is wrong to say by workman as industry has been closed for that purpose as stated above who owner wants that his industry shall remain closed and in that eventuality the industry is to suffer loss.

11. If the respondent is closed, the workman is not entitled to reinstatement as claimed for. The reference made is not correct as the workman stated the Labour Commissioner & Secretary, Labour and Employment Departments that industry is working. The management has terminated his services. If the reference petition is not correct to the facts of the case, the workman is not entitled the relief sought.

12. How so ever the question is whether the workman had worked for more than 240 days in a year or not. The workman has come into witness box as WW-1 and made statement that he joined the respondent on 17th May, 1985 and was removed from the job on 22nd February, 1988 and his E.S.I. Card is Ex. W-1 and pay slips are Ex. W-2 to Ex. W-12. The workman admitted his signatures on Ex. M-1. Ex. M-1 is the appointment letter of Satyawant the applicant on temporary post for eight months and service could be terminated earlier depending upon the completion of work. He does not require any right what so ever for a regular employment in the Company by the virtue to this temporary employment and your service will cease after the expiry of the period of eight month for which you have employed on temporary basis and this employment will end automatically. This appointment was made on 17th June, 1987.

13. Ex. M-2 is the Employment Provident Fund Scheme and showing that he joined as Helper in the respondent from October, 1985 and worked upto January, 1987.

14. The question remains for determination if the industry is closed whether the workman is entitled the re-employment and back wages or not. When the industry is lying closed, the management shall not pay to the workman back wages or re-employ him. Hence I decide this issue in favour of the management.

Issue No. 2 :

15. The reference was made without applying the mind because industry was closed. The applicant was making representation that industry is still working and the Labour Inspector had reported that industry is lying closed as inspected and gave report sent to the Secretary, Labour & Employment Department, Chandigarh which is making reference, reference thus made is without application of mind and I decide this issue in favour of the management and against the workman.

Issue No. 3 :

16. The workman was appointed for specific period for 8 months but when the contract ran for about three years, appointment of workman was for specific period loses its strength and the workman can not be stated to be employed for specific period as per contract and I decide this issue against the management and in favour of the workman.

Issue No. 4 (Relief) :

17. In view of my findings on the above issues I dismiss the reference petition. The reference is answered and returned accordingly. The parties are left to bear their own costs.

Dated :

The 27th September, 1994

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. ref. 236-94/2445 dated the 30th September, 1994

Forwarded (four copies) to the Secretary to the Government Haryana, Labour & Employment Department, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court
Rohtak.

No. 14/13/87-6 Lab./806.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-Cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Auto Cars, Hisar Road, Rohtak, *versus* Satya Narain.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 12 of 1993
between

SHRI SATYA NARAIN YOGI S/O SHRI RAMESHWAR DASS, HOUSE NO. 19/23,
CHAMANPURA, ROHTAK,

.. Workman

and

THE MANAGEMENT OF M/S. AUTO CARS, HISAR ROAD, ROHTAK

Present :-

Shri B. M. Lall, authorised representative for the workman.

Shri M. Kaushal, authorised representative for the management.

AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following disputes, between the parties, named above, to this Court for adjudication,—*vide* Labour Department Endorment No. SOV/Roh./136-91/3382—87, dated 17th January, 1992 :—

Whether the termination of services of Shri Satya Narain Yogi is justified and in order ? If not, to what relief he is entitled ?

2. The workman and the management were summoned. The workman appeared and filed his claim statement which is to the effect that the workman was appointed as typist on 13th March, 1986 initially at a monthly salary of Rs. 600. He is at present drawing his salary of Rs. 1019-50 paise. On 10th June, 1991 his services were illegally terminated on the ground that his work was not satisfactory. The workman was not issued chargesheet nor any domestic enquiry was held prior to the termination of his service and also he was never informed either verbally or in writing that his work was not satisfactory. The workman remained in the service of the employer continuously for a period of 5½ years and he completed more than 240 days. The workman was neither given the mandatory notice or pay in lieu of nor any retrenchment compensation thus violating the mandatory provision of section 25F of the I. D. Act, 1947. Some another persons junior to the workman, has since been employed in his place thus violating section 25-G and 25-H of the I.D. Act, 1947. Hence this claim petition was filed that workman be reinstated with continuity of service and full back wages and seniority.

3. The management appeared and filed the written statement claiming that the respondent is a establishment doing trading and business at its unit at Rohtak. The applicant was working as Sales Executive for promotion of sales and effecting sales for and on behalf of the Company. As such he was a salesman with the management and was not a workman within the meaning of section 2-S of the I. D. Act, 1947 and hence the reference made is not tenable. It is thus prayed that the reference be answered in favour of the respondent. The applicant joined the service on 1st July, 1987 but was never appointed on 13th March, 1986 as alleged. The applicant was appointed as typist but was performing the work for promotion of sales in the the company and was a salesman. His last salary drawn was Rs. 1019. His services were terminated,—*vide* letter dated 10th August, 1991 on account of unsatisfactory work. Since the applicant was working as saleman and he has comitted illegality and irregularity in performance of his duties as salesman which hampered the good will of the company and complaints were received against him for such acts from the open market which lowered the prestige of the establishment. Therefore, the management was forced to effect the termination of service of the applicant,—*vide* letter dated 10th June, 1991. Opportunities were also given to the applicant to be careful for such matters. The applicant is gainfully employed since his services were terminated by the management on 10th June, 1991, hence prayed by the respondent that petition be dismissed with costs.

4. Replication was filed by the workman. On the pleadings of the parties, the following issues were framed :

1. Whether the petitioner is not a workman ?
 2. Whether the reference is without jurisdiction ?
 3. Whether the petitioner is gainfully employed ?
 4. As per terms of reference ?
 5. Relief ?
5. My findings on the above issues with reasons thereof are as under :—

Issue No. 4 :

6. The workman has come into witness box as WW-1 and also examined Shri I. D. Vashisth, U. D. C. Regional Provident Fund Commissioner, Faridabad as WW-2 and closed the evidence. The management has examined Shri Deepak Bakshi, Manager, Respondent as MW-1 and after tendering documents Ex. MX-1 to MX-3 and closed the evidence.

7. The learned authorised representative for the applicant made submission that as the appointment letter in the name of the applicant was as typist and applicant had been doing the typist work and not doing the sales as alleged by the respondent, the applicant's case is governed by the I. D. Act.

8. The workman has come into witness box as WW-1 and made statement that he was appointed as typist by the respondent on 13th March, 1986. He also made statement that after his removal Randhir Singh was appointed as typist. The workman admitted that the respondent has sales of Scooters, Matador spare parts etc. and he had gone outside for the company work and his signatures on Mark 'A' to but he admitted his writing on Ex. WW-1/1 to WW-1/8. The workman admitted that what so ever he was assigned, he was do. The Co. use to theft to removal to job but made complaint police and he had given the application Ex. WW-1/9 which is letter that he had even threatened. He admitted that he used to give slips like Ex. WW-1/1 and admitted that he used to go courier of as the company for function of the company, and used to go for sales (financial institutional sales) and he denied the suggestion that he had given the foot rest etc. to the same. He admitted that he used to get T. A. & D. A. for going outside for function of the respondent. He denied the suggestion that he did not approve his work despite number of warnings and advises by the respondent.

9. The respondent has examined Deepak Bakshi, Manager of the respondent-management and he made statement that the respondent use to sell the scooters matador four whealler etc. and the applicant used to work as sales promotion and Ex WW-1/2 to WW-1/8 were issued by the applicant. When so ever the applicant used to go out used to get T. A. copies of which are Ex M-1 to M-7. (The applicant has admitted signatures on Ex. M-1 to M-7). He also made statement regarding the work of the respondent of sales promotion and number of complaints has been received against applicant as he was not giving whole material with the vehicle.

10. The learned A. R. for the workman has made submission that as the workman was has working as typist he is covered under the I. D. Act and he is fully covered under section 25-F of the I. D. Act as the workman has worked for more than 240 days in a year. There is no documents on the record as to whom he was appointed or on what post he was appointed, however, the termination letter is on the record the photostate copy of which Ex W-1 wherein service of workman were terminated with immediate effect i.e. 10th June, 1991 not mentioning as typist or sales representative I am to find to whether he worked as typist or sales representative. The submission was made by the learned A. R. for the workman that he is proved as typist thus, he is entitled to protection given by the I. D. Act. He placed reliance between *Promer Sales Private Limited versus Manohar Sondhur and others*, cited in 1993 Lab. I. C. 1762, holding that sales representative-Nature of duties showed that his main job was that of a salesman but he was also doing lot of clerical work in addition to manual and technical work. No evidence to show that he was performing any managerial, administrative or supervisory function. As such he was held to be workman as defined in section 2 (s) of the I.D. Act. The learned A. R. for the workman also placed reference to the reliance between *Gaur Brahman Vidya Parchari Sabha and Industrial Tribunal-cum-Labour Court & Anr.* cited in LLJ (II), 500, holding that written statement filed by the management before the Labour Court, there was no plea taken that the services of the workman were in fact terminated on account of any misconduct relating to embezzlement of funds. A simple plea was taken that the termination of services of the workman was in accordance with the terms and conditions of appointment letter. When there was no such plea in the written statement that termination of services was on account of misconduct, there could be no occasion for the management to make a prayer to the Labour Court to otherwise justify the order of termination.

11. The authority referred by the learned A. R. for the workman between *D. K. Yadav and J. M. A. Industries Ltd.* cited in LLJ (II), 696. This authority is not applicable to this case and this is applicable to other aspects of the case and hence there is no use referring as to what was held in this authority.

12. The learned A. R. for the management made submission when there is no document showing as to what appointment of the applicant took place, Court to look from the document on the file as to whether the workman is typist or sales representative. It is to true that no appointment letter has been produced on the filed by either party. It is true that applicant has not been able to produce the any document in evidence showing that he was doing the typist work in the respondent company and no document is produced by the workman as the onus of the issue was on him. It is as such not proved that the workman was working as typist.

13. The workman has produced on the record photostate copy or Employees Provident Fund Scheme which is Ex. WY, WX, photostatcopy Ex. WW-1/2 to WW-1/8, regarding sales of vehicle to Bharat Singh, Satpal Singh etc. Ex. WW-1' is that one foot rest. The report is signed by the Satya Narain on 1st May, 1991. As learned A. R. for the management contended that it shows that documents avering the reach of the applicant but he has not produced the documents but he shows that he was working as sales representative and not typist. The learned A. R. for the management also made submission that Ex. M1 to M-7 also shows that the applicant had availed T. A. & D. A. for going to Delhi, Sonapat, Bhiwani and it is proved that the applicant had been doing the work of sales representative, so was the submission made by the learned A. R. for the management. The learned A. R. for management also referred to MX-1 resignation letter submitted by the applicant to the respondent but the management has advised him to do sale promotion and not to

b2 indulged any tactics and thus the resignation was not accepted on 1st March, 1990. Ex. MX-2 is letter sent by Harish Auto Car, Rewari to Manager Auto Car, Rohtak that he has not received the footrest and took it which they said not available who had gone to Satynarain Yogi and this is not in accordance to that reputed firm. Ex. M-3 is complaining made by Sat Pal, President Truck Union, Rohtak and requesting that he had taken the scooter or their concern but the sales representative had refused to give footrest and toolkit.

14. It is the duty of the workman to prove his case and as such I am of the opinion that he failed to prove that he has served about 240 days in a year and as he had failed to prove so reference on not to be admitted. It is the duty of management and is also required to produce the evidence but the management has not produced the evidence as it is apparently on the applicant to prove that he has served for about 240 days in a year. The management is not produced any record etc. showing as to when applicant was appointed.

15. The next submission was made by the learned for the management made that as the applicant has been working as sales executive for promotion of sales on behalf of the company. As such he is salesman with the management and not a workman within the meaning of Section 2 (s) of the I. D. Act and hence the reference is not tenable. The case of the respondent is that the applicant joined the service on 1st July 1980 and was joined on 13rd March, 1986. As I have already find that the workman has failed to prove that he joined the service as alleged by him on 1st July, 1980. The management appointed him on 13rd March, 1986. The main point is that the workman had been serving as sales executive or a typist.

16. The management has placed reliance Ex. WW-1/2 to Ex. WW1-/8 and Mark-1 to Mark-7 proving that the applicant had been taking the T. A. & D.A. for going from Rohtak to Delhi, Sonapat, Sonapat and Bhiwani. The workman if want he could produce the evidence that he had typed the paper but the workman had failed to prove it.

17. As such I am of the view that the workman is not prove to within meaning of Section 2 (s) of the workman but he is has sales executive and sale executive can not come within meaning of workman. The reference is fails on this score. As such the reference is not maintainable and I decide this issue against the work.

Issue No. 2 :—

18. As the workman is not prove to workman in the meaning of Section of 2 (s) of the I. D. Act, thus he has not right to claim and hence I decide this issue against the workman.

Issue No. 2 & 3 :—

19. Both these issues are not pressed or claimed by the parties. Hence I decide both these issues against the management.

Issue No. 5 :— (Relief) :—

20. In view of my findings on the above issues the reference petition fails and dismissed. The reference is answered and returned accordingly. However, the parties are left to bear their own costs.

The 30th September, 1994.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. 12-92/2460, the 30th September, 1994.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.